

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 23, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No: 00MD-443(B)

MAUI

Consideration of Request to Extend Right-of-Entry Over
State Lands for Access Purposes to Lani Stark at Honopou,
Makawao, Maui, TMK (2) 2-9-003:020 por., as Provided by
Amended Board Action of July 28, 2006 (Item D-2)

REMARKS:

On December 13, 2002 (Item D-19), the Board of Land and Natural Resources (BLNR) approved the issuance of two non-exclusive easements (Easements A & B) for access and utility purposes to service single-family dwellings that were to be developed on private property situate at TMK (2) 2-9-003:012.

On July 28, 2006 (Item D-2), staff recommended that the BLNR rescind the approval for Easement B based on the facts that 1) reasonable access to private property would be accomplished via issuance of Easement A; 2) the second dwelling that was to be serviced by Easement B was never constructed; and 3) Easement B was being used as a transportation corridor for a commercial garden-tour operation which generated complaints from area residents. For a complete history of the July 28, 2006 meeting and the Board action, attached hereto as **Exhibit LS-1a** is a copy of **Staff's Submittal, Approved As Amended**. Also attached as **Exhibit LS-1b** is a portion of the **Minutes** from the Land Board meeting held on July 28, 2006 involving this matter.

Because commercial garden-tour operations were not the intended end use of Easement B, staff opined that the exemption of Easement B from HRS Chapter 343 requirements, in the December 2002 BLNR approval, was not valid and that Ms. Stark was subject to those requirements if she chose to pursue the use of State lands for commercial purposes in the agriculture district.

At the July 28, 2006 meeting, the Maui District Land Agent Mr. Daniel Ornellas testified that Easement A was adequate for Ms. Lani Stark to access her entire property. Chairperson Young commented

that the State granted Ms. Stark access to her property via Easement A, but it really is Ms. Stark's responsibility to deal with access within her own property. See **Minutes** attached hereto as **Exhibit LS-1b**. However, Lani Stark claimed that Easement B was absolutely necessary for her to gain access to her lower portion of the property in order for her to care for her garden. See **Exhibit LS-1b**. As a result, the BLNR approved, with amendments, Item D-2 and required that the rescission of Easement B be deferred for six (6) months to allow Ms. Stark time to complete necessary HRS Chapter 343 requirements. The BLNR also granted Ms. Stark a six (6) month Right-of-Entry (ROE) permit based on statements by her that she did not have reasonable access to the southwestern portion of her property for the transport of heavy equipment needed to maintain her garden.

Amendments to Item D-2 also included conditions that she remove encroachments on State lands such as unpermitted grading and utility lines and that she not remove any fencing erected by the State's tenant on State lands.

On January 10, 2007, a site visit was conducted by staff to assess whether Ms. Stark had complied with BLNR conditions and to confirm whether or not Ms. Stark had reasonable access to all portions of her property via Easement A.

The site visit confirmed that Ms. Stark had not complied with BLNR conditions. Grading had not been removed, utility lines remain in place on State lands and fencing erected by the State's tenant was removed without permission. Furthermore the site visit confirmed that reasonable access does exist via paved gravel paths that range from 6 to 10 feet wide on level ground and traverses the entire length of her property (**Exhibit LS-2**). Staff intends to supplement Exhibit LS-2 at or before the Land Board meeting.

Recently, DLNR received several written requests from Ms. Stark to extend her ROE for Easement area B, and time for completion of HRS Chapter 343 requirements for commercial use.

As stated above, Ms. Stark failed to comply with the conditions imposed by the Board. More importantly, Staff's recent inspection confirmed that Easement A adequately allows Ms. Stark to access her entire property. Therefore, there is absolutely no basis for extending the Right-of-Entry for Easement area B. Staff recommends that the request to extend the Right of Entry for Easement area B be denied.

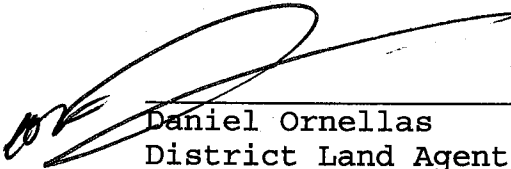
It is worth noting that Staff has not observed any indication

that Ms. Stark is able to complete any portion of her HRS Chapter 343 requirements for commercial activity. However, nothing prevents Ms. Stark from pursuing her Chapter 343 compliance for commercial activity as it relates to Easement area A. If Ms. Stark ever completes the environmental assessment requirements for commercial activity under Chapter 343, she can then request the Board's permission to use Easement A for commercial activity, and the Board can take up that issue at such time.

RECOMMENDATION: Based on the foregoing points and authorities, and the fact that Easement A adequately allows Ms. Stark to access her entire property, that the Board:

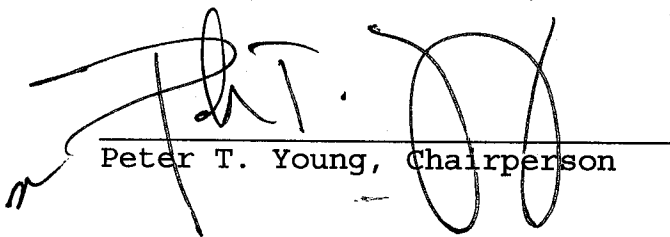
1. Deny the request to extend the Right-of-Entry for Easement area B; and
2. Confirm the rescission of Easement B and the termination of the Right-of-Entry for Easement area B as of February 1, 2007.

Respectfully Submitted,



Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 28, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii (

PSF No: 00MD-443(B)

MAUI

Rescind Prior Board Action of December 13, 2002 (Item D-19), Related to the Direct Issuance of Non-Exclusive Easement B to Lani Stark for Access and Utility Purposes, Honopou, Makawao, Maui, TMK (2) 2-9-003:020 por.

BACKGROUND:

On December 13, 2002, the Board of Land and Natural Resources (BLNR) approved the issuance of two 55-year term, non-exclusive easements (Easement A and B) to Lani Stark for access and utility purposes (**Exhibit A**).

Easement A was to be issued gratis due to the kuleana status of the parcel identified as TMK (2) 2-9-003:012. The second easement, Easement B, was to be issued at fair market value. Both easements were to provide non-exclusive access to residential dwellings at two different locations on parcel 12.

The request for easements were made exempt from HRS chapter 343 requirements based on the understanding that the use of State lands were not to change from proposed residential uses on private property.

Easement A currently services a single family residential unit that is being rented out. A second dwelling has not been constructed. Easement B is not being used for residential purposes.

REMARKS:

Since the BLNR approval in 2002, Ms. Stark has engaged in activities on Easement B and adjacent State encumbered lands that are commercial in nature and that are subject to HRS Chapter 343 requirements.

as Amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
July 28, 2006

LS-1a
ITEM D-2

Ms. Stark has been operating Kapila Ginger Garden that includes guided tours and ginger product sales. These activities were advertised and require a fee (**see Exhibit B**).

In February of 2006, activities at Kapila Ginger Garden began to generate complaints from residents of the Honopou area about traffic congestion caused by tourist visits and road construction. Residents complained of hazardous conditions created by a high volume of tourist traffic being directed off of Hana Highway and onto Ulalena Loop Road to view waterfalls. This area of Hana Highway has very poor sight distances and high traffic speeds (**Exhibit C**).

On March 1, 2006, District Land Agent, Daniel Ornellas and DOCARE Officer Randy DeCambra, responded to the complaints. Upon arrival at the subject location, Mr. Ornellas and Officer DeCambra observed Ms. Stark and her contractor, Mr. Robert Williams, grubbing and grading portions of State land and Ulalena Loop Road to expand the size of the road to accommodate increased traffic flows being caused by her garden tours. Soil material was being cut from a hillside (State land) and then cast over into adjacent State and private property without proper erosion control measure to prevent adverse impacts (**Exhibit D**). An immediate phone call to Lance Nakamura of the Maui County Department of Public Works and Environmental Management confirmed that Ms. Stark had no authorization to alter Ulalena Loop Road.

In addition, Ms. Stark also graded encumbered State lands adjacent to her access Easement A, without proper authorization, to build a parking lot, to construct a pad to locate a port-a-potty and to erect signs for advertisement of her commercial activities (**Exhibit E**).

Furthermore, an unauthorized stream diversion and "unsafe" electrical lines traverse State lands outside of her easement area to service Ms. Stark's rental units, various shacks and outhouses. The electrical lines were determined to create an "unsafe condition" as documented in a letter dated, November 29, 2005, from the Maui County to our tenant Lafayette Young, RP S-5232 (**Exhibit F**).

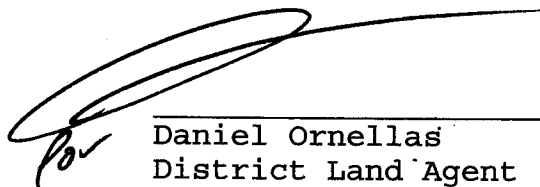
Ms. Stark continues to ignore numerous verbal and written requests from the State, from our tenant Mr. Young, and from Mr. Dave Jorgensen, Esq., lawyer who represents adjacent private property owner, Ann Bauer, (TMK (2) 2-9-003:014), to cease and desist unauthorized uses and to remove any unauthorized improvements (**Exhibit G**).

It is in the best interest of the State to prevent disposition and use of State lands that result in adverse impacts to natural resources and the community in general. Any significant changes in the proposed uses of State lands are subject to HRS Chapter 343 requirements.

RECOMMENDATION: That the Board:


1. Rescind the prior Board action of December 13, 2002, under agenda item D-19, authorizing the issuance of a 55-year term, non-exclusive easement (Easement B) to Ms. Lani Stark for access and utility purposes.
2. Authorize the refund of \$515 payment by Ms. Lani Stark for proposed Easement B (\$460 fee for easement area, \$30 documentation fee, and \$25 mapping fee).

Respectfully Submitted,



Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:

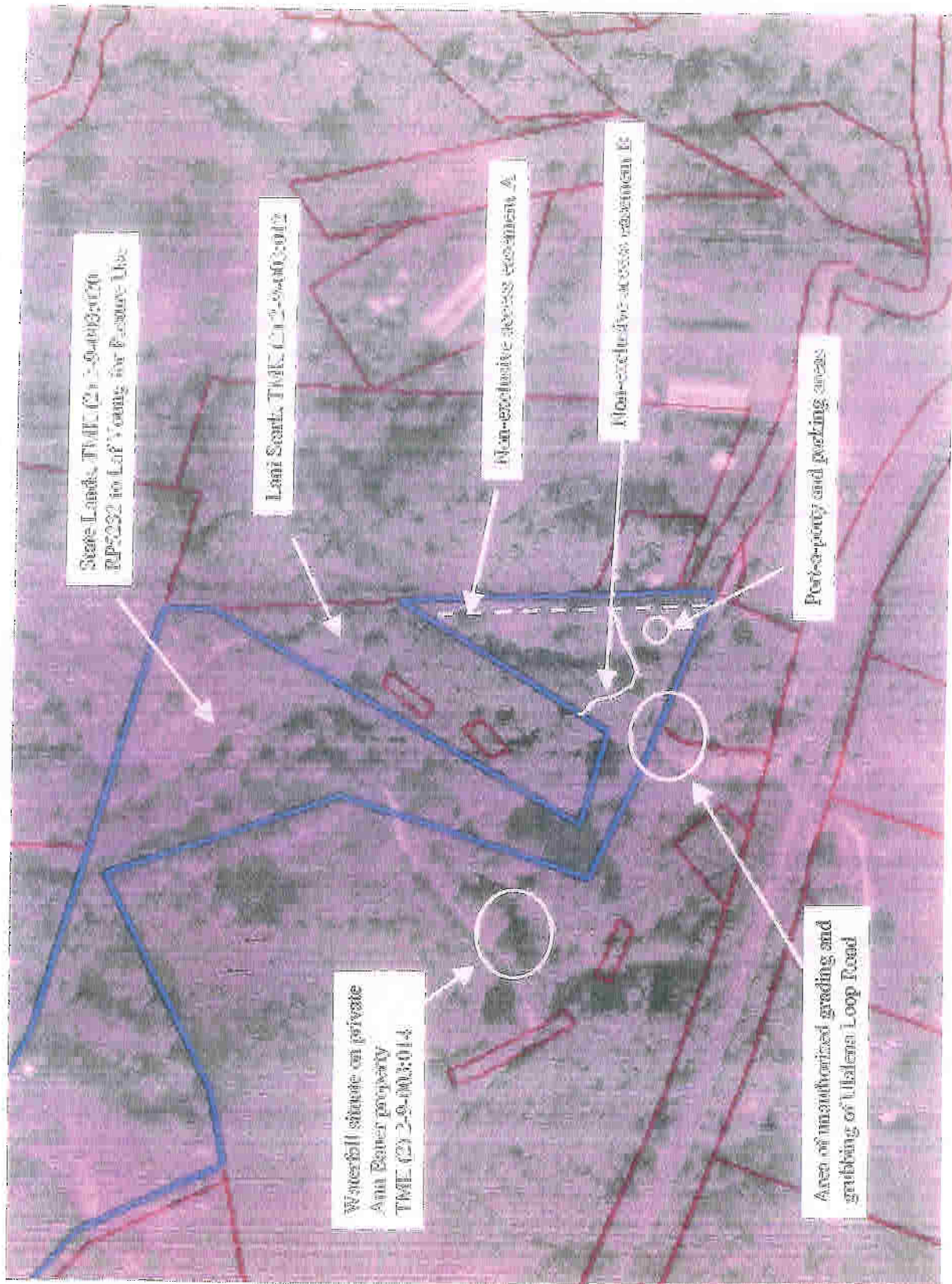


Peter T. Young, Chairperson

Approved As Amended. The Board approved Staff's Recommendation, but added the following new conditions:

"3. Provided however, the effective date of the rescission of the prior Board action that will effectively terminate any interest in and rights to Easement B shall be deferred for six (6) months on the following conditions: (a) Lani Stark may only use Easement B for access to her private property solely for taking care of and maintaining her garden and plants, provided however, only Lani Stark and her four (4) employees may use Easement B for the aforesaid limited purpose of taking care of and maintaining the garden and plants; (b) Lani Stark must immediately cease and desist using Easement B for commercial, agricultural tourism or any other purpose except as stated in the aforesaid condition (a); (c) Easement B shall not be used for any purpose other than as stated in the aforesaid condition (a); (d) Lani Stark must execute the department's standard right-of-entry that contains, among other provisions, indemnity and insurance provisions, and the purpose of the right-of-entry shall be limited to the aforesaid condition (a); (e) Lani Stark shall remove all of the

unauthorized encroachments described in Staffs' Submittal; and remedy or remove the other violations (including but not limited to the unauthorized and upermitted grading outside of Easement B area, the unauthorized and unpermitted placing of electrical lines outside of Easement B area as described in Staffs' Submittal and the unauthorized and unpermitted stream diversion crossing over State lans); (f) Lani Stark may install a gate at the entrance of Easement where a fence currently exists, with the understanding that the gate will allow Lani Stark to access, and provided further, no other removal of fencing placed on the State lands by Permittee Lafayette Young shall be removed; (g) Lani Stark shall immediately complete and submit an application for Easement B and describe the true and intended purpose and use of Easement B; and (h) such other terms and conditions as may be prescribed by the department with the approval of the Chairperson.



Honopou, Maunaloa, Maui
Orthographic Aerial Photo and TMK Overlay

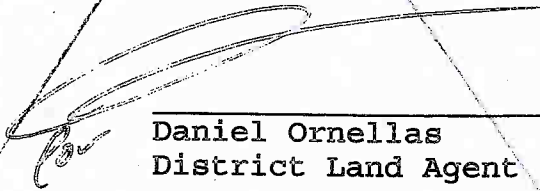
July 28, 2006

It is in the best interest of the State to prevent disposition and use of State lands that result in adverse impacts to natural resources and the community in general. Any significant changes in the proposed uses of State lands are subject to HRS Chapter 343 requirements.

RECOMMENDATION: That the Board:


1. Rescind the prior Board action of December 13, 2002, under agenda item D-19, authorizing the issuance of a 55-year term, non-exclusive easement (Easement E) to Ms. Lani Stark for access and utility purposes.
2. Authorize the refund of \$515 payment by Ms. Lani Stark for proposed Easement E (\$450 fee for easement area, \$30 documentation fee, and \$25 mapping fee).

Respectfully Submitted,



Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 13, 2002

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 00MD-443

MAUI

Rescind Prior Board Actions of October 9, 1987 (under agenda item F-1-e and F-3); of January 12, 1996 (under agenda item F-18); of August 21, 1997 (under agenda item D-21); Direct Issuance of Perpetual, Non-Exclusive Easements to Lani Stark for Access and Utility Purposes; Mutual Cancellation of Grant of Easement Bearing Land Office Deed #S-27604 issued to Vijay Arthur Wenk; Makawao, Maui, Tax Map Key: (2) 2-9-3:portion 20.

APPLICANT:

Lani Stark, unmarried, whose mailing address is 1860 Olinda Road, Makawao, Hawaii 96768.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Honopou situated at Makawao, Maui, identified by Tax Map Key: (2) 2-9-3:portion of 20, as shown on the attached map labeled Exhibit A.

AREA:

5,883 square feet, more or less (Easement A)
4,577 square feet, more or less (Easement B)

ZONING:

State Land Use District: Agriculture
County of Maui CZO: Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State

As Amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
December 12, 2002

Item D-19

EXHIBIT A

Constitution: YES _____ NO x

CURRENT USE STATUS:

Encumbered by Revocable Permit No. S-5232, Lafayette Young, Permittee, for pasture purposes.

Encumbered by Revocable Permit No. S-6519, Nancy Chastang Kerbow and Seth Ashby, for right-of-way for access and utility purposes to serve Parcel 13.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Easement A = Gratis.

Easement B = One-time payment to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item No. 1 that states "use of existing roadways on State lands for land dispositions, including but not limited to easements, right of entries, revocable permits, leases, and licenses, if not expanded from its original size"; Item No. 2 that states "use of State lands that previously existed with no interruption of use change"; and Item No. 4 that states "repairs and/or maintenance of existing structures, facilities, equipment or topographical features that involves no expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

Place of business registration confirmed:	YES _____	NO _____
Registered business name confirmed:	YES _____	NO _____
Applicant in good standing confirmed:	YES _____	NO _____
Not applicable, individual		

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment for Easement B and
- 2) Provide survey maps and descriptions for Easement B according to State DAGS standards and at Applicant's own cost.

REMARKS:

Staff is reviewing Maui's backlogged files. Staff has been working with Ms. Stark to finalize her easement document. Previous Land Board actions dating back to 1987 are a result of the grant of easement bearing LOD #27604 issued to Mr. Vijay Wenk on December 2, 1986. Mr. Wenk sold Parcel 12 on August 18, 1987 to Mr. Douglas Faulkner. The Land Board consented to the assignment of the grant of easement from Mr. Vijay Wenk to Mr. Douglas Faulkner on October 9, 1987. At the same meeting of October 9, 1987, the Land Board approved Mr. Faulkner's request for a second easement for Parcel 12. Mr. Faulkner was building a second dwelling and the steep terrain required the access come through the State property. Staff did not complete the assignment of the grant of easement or the second easement document.

Mr. Faulkner sold Parcel 12 on December 20, 1995 to Christopher and Lani Stark. On January 12, 1996 staff amended its previous Land Board approval for the second easement changing the name of the Applicant from Douglas Faulkner to Christopher and Lani Stark. During this period, staff realized it could not obtain the necessary documents from Mr. Faulkner to complete the assignment of the grant of easement from Mr. Wenk to Mr. Faulkner or issue the second easement to Mr. Faulkner. Therefore, staff recommended to the Land Board on August 21, 1997 to grant a perpetual easement to Christopher and Lani Stark for access and utility purposes. The Stark easement alignment would cover the area encumbered under the grant of easement issued to Mr. Wenk [Easement A] and the second easement requested by Mr. Faulkner [Easement B].

Due to a change in address staff has finally contacted Mr. Wenk. He has agreed to mutually cancel the easement because he no longer owns Parcel 12. Therefore, staff recommends mutually canceling the Grant of Easement bearing land office deed #S-27604.

Upon closer review of the Land Board approval of August 21, 1997, staff requested our Abstract Section to determine if Parcel 12 has kuleana status. Parcel 12 is an award of kuleana status. See Exhibit B. Apparently on August 12, 1983 when Mr. Wenk obtained Land Board approval for the issuance of the easement it was not determined if Parcel 12 had kuleana status. Consideration paid by Mr. Wenk to the State was \$210.

Ms. Stark is requesting 2 easements. Easement A is over the existing grant of easement issued to Mr. Vijay Wenk. This is the access to the main dwelling on Parcel 12. Easement B is to provide access to a second dwelling on Parcel 12. Due to the steep terrain it can only be accessed from the State's Parcel 20. Staff is recommending Easement A should be for "no consideration" because it provides Parcel 12 with adequate legal access. Easement B enhances Parcel 12 so the property owner's second dwelling has legal access. Therefore it is appropriate that there should be a consideration for Easement B. Ms. Stark has submitted a \$1,000 check for the appraisal deposit on March 18, 2000.

Staff is recommending the name of the Applicant be Lani Stark only. Pursuant to Divorce Decree filed September 26, 1997 (FC-D N. 97-0418) all interests in Parcel 12 was turned over to Ms. Stark.

Furthermore, staff is recommending the Land Board action of August 21, 1997 be rescinded because some of the terms and conditions staff recommended such as assignment premium and sublease clause are not consistent with our existing easement document.

The tax map shows there are 2 poalimas (Parcel 46 and 47) within Parcel 12. They were sold to Lani Stark by Land Patent Grant No. 15953 on November 29, 2001.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

No agency or community comments were solicited for comments. A copy of the submittal was submitted to Ms. Stark. There are no pertinent issues or concerns.

RECOMMENDATION: That the Board:

1. Rescind Prior Board Actions of October 9, 1987 (under agenda item F-1-e and F-3); of January 12, 1996 (under agenda item F-18); and of August 21, 1997 (under agenda item D-21).
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of perpetual, non-exclusive easement to Lani Stark covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - B. The perpetual easement shall inure to the benefit of the real property described as Tax Map Key: (2) 2-9-3:12;

- C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Mutual cancellation of grant of easement bearing Land Office Deed #S-27604 issued to Vijay Arthur Wenk under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current cancellation document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Charlene E. Unoki
Acting Assistant Administrator

APPROVED FOR SUBMITTAL:

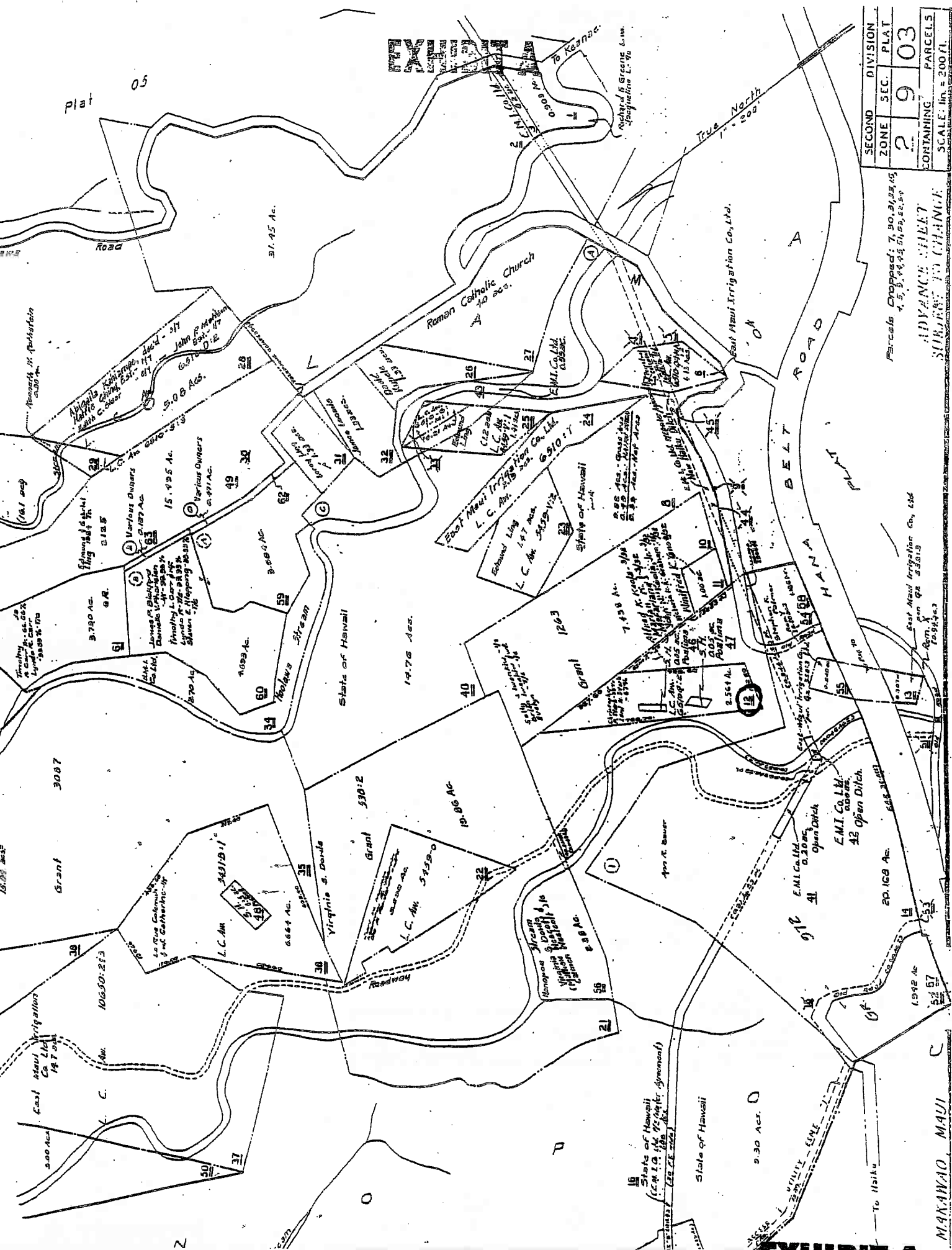

GILBERT S. COLOMA-AGARAN, Chairperson

Approved as amended. The Board amended the Recommendation Section by amending paragraph 2 to read as follows:

- "2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual, non-exclusive easement for Easement A and a 55-year term, non-exclusive easement for Easement B to Lani Stark covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current [~~perpetual~~] easement document form, as may be amended from time to time;
 - B. The [~~perpetual~~] easement shall inure to the benefit of the real property described as Tax Map Key: (2) 2-9-3: 12;

ITEM D-19 (Cont'd)

- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State."

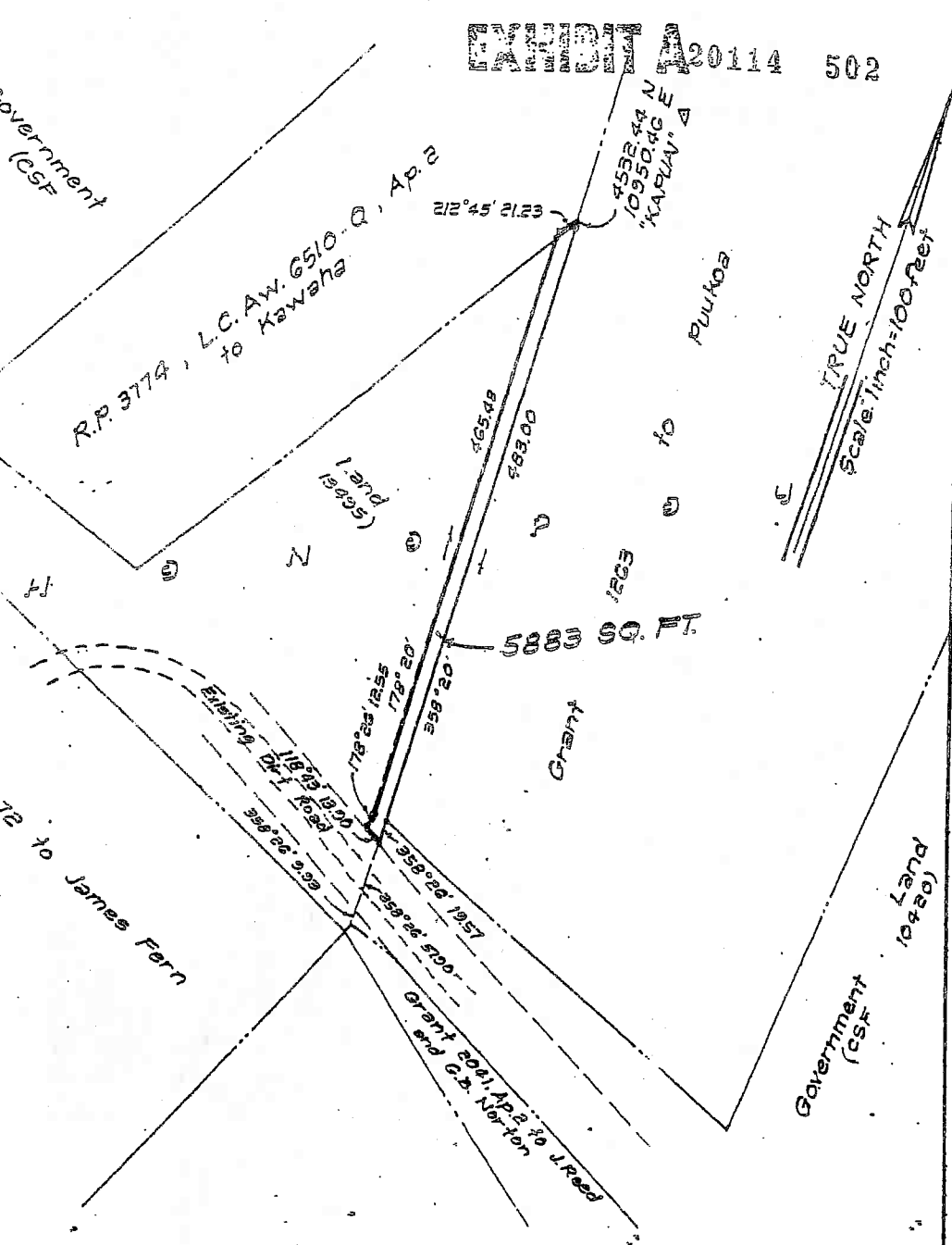


SECOND	DIVISION	ZONE	SEC.	PLAT	CONTAINING	PARCELS
2	9	03				

Parcels Cropped: 7, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

ADVANCE SHEET
SHEET NO. 100

MAKAWAO, MAUI



* Easement A

**PERPETUAL NON-EXCLUSIVE
ACCESS AND UTILITY EASEMENT**

Honopou, Makawae, Maui, Hawaii

Scale: 1 inch = 100 feet

01(05)
10/10/10
10-03-20-20
19890

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

JUNE 7, 1984

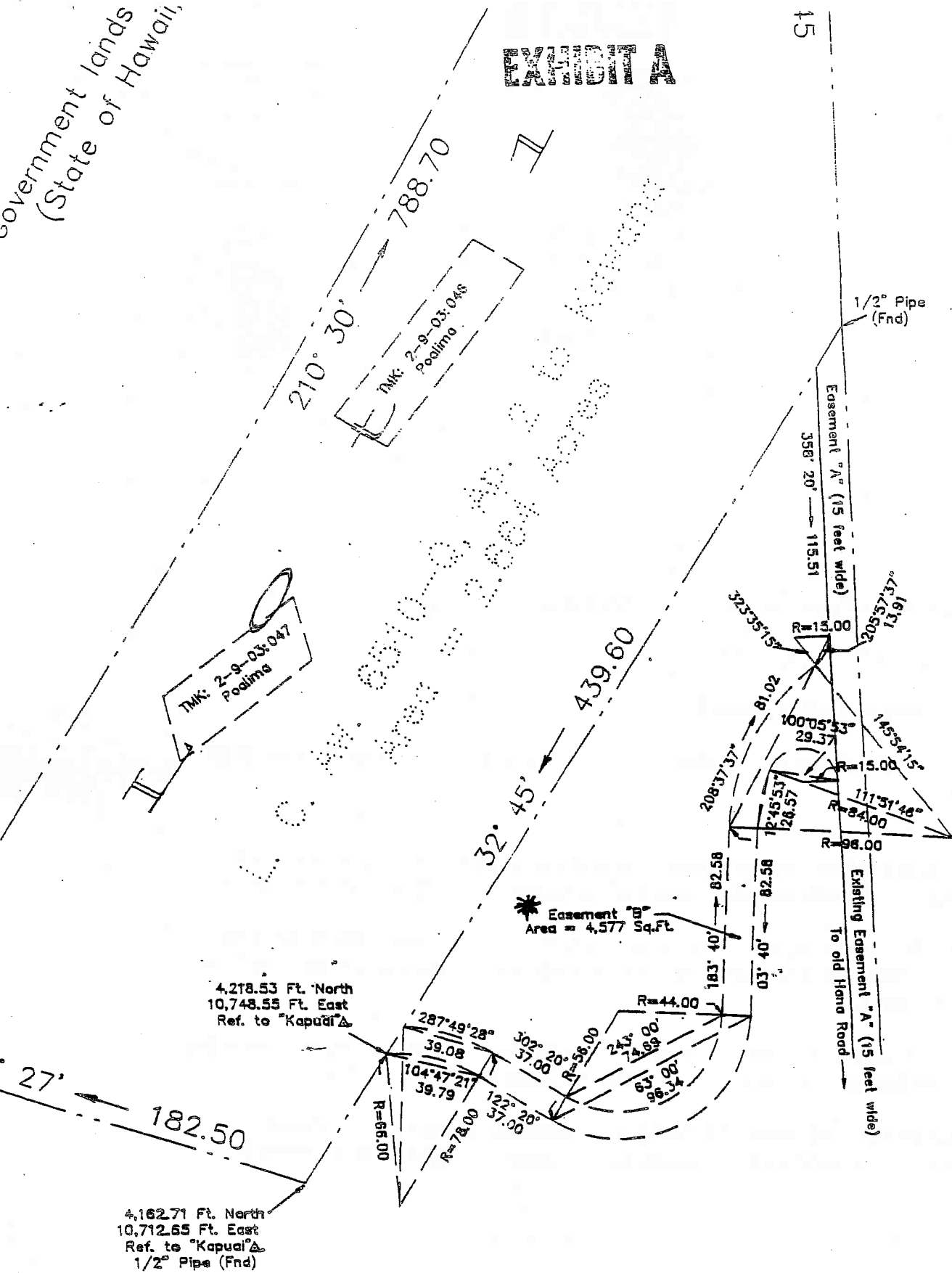
State of Hawaii

EXHIBIT A

Government lands
(State of Hawaii)

EXHIBIT A

SEN

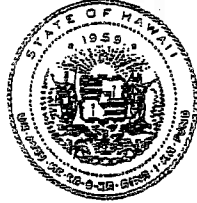


Government lands of Honopou
(State of Hawaii, owner)

EXHIBIT A

EXHIBIT B

MIN J. CAYETANO
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. Box 621
HONOLULU, HAWAII 96809

GILBERT S. COLOMA-AGARAN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

ERIC T. HIRANO
DEPUTY DIRECTOR

LINNEL T. NISHIOKA
DEPUTY DIRECTOR FOR
THE COMMISSION ON WATER
RESOURCE MANAGEMENT

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND RESOURCES
ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE
COMMISSION
LAND
STATE PARKS

October 22, 2002

9978(M)

MEMORANDUM

TO: Charlene Unoki, Assistant Administrator

THROUGH: Dierdre S. Mamiya, Administrator *[Signature]*

FROM: E. Mahoe Collins, ~~Abstractor~~

Subject: Kuleana Status of designated tax map key parcel (2) 2-9-03: 12 situate at Makawao, Maui.

We have been asked to determine the kuleana status of the original source of title to tax key parcel (2) 2-9-03: 12, identified as Land Commission Award 6510 - Q: Apana II to Kawaha.

Records in our office reveal that the name of the awardee, Kawaha, does not appear in the Mahele Book of 1848 indicating that, said Kawaha did not participate in the 1848 Land Division with the king.

As recorded by the Commissioners in Volume 8 of the Registry of Foreign Testimonies at page 136, the said Kawaha received his lands at the time of Kamehameha I in 1847.

We find that the subject land claim of Kawaha, as adjudicated by the Land Commissioners under Land Commission Award 6510 - Q: Apana II, dated January 11, 1853, is an award of kuleana status.

EXHIBIT A

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Land Management Branch
Honolulu, Hawaii 96813

August 21, 1997

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

MAUI

REQUEST FOR A DIRECT ISSUANCE OF
PERPETUAL, NON-EXCLUSIVE EASEMENTS
TO CHRISTOPHER AND LANI STARK
FOR ACCESS AND UTILITY PURPOSES,
AND AN IMMEDIATE RIGHT OF ENTRY FOR SITE CONTROL PURPOSES
OVER, UNDER, ACROSS AND ON GOVERNMENT LAND,
IDENTIFIED BY TAX MAP KEY: 2-9-03: PORTION 20,
SITUATE AT HONOPOU-HOOLAWA, HAMAKUALOA, MAKAWAO, MAUI.

STATUTE: Section 171-13 and other applicable sections, Hawaii Revised Statutes, as amended.

APPLICANT: CHRISTOPHER AND LANI STARK

FOR: Perpetual, non-exclusive easements for access and utility purposes and an immediate right of entry, over, under, across and on Government land, identified by Tax Map Key: 2-9-03: Portion 20, situate at Honopou-Hoolawa, Hamakualoa, Makawao, Maui, as shown outlined in bold on the map labeled Land Board Exhibit "A" and easement areas on the map labeled Land Board Exhibit "B", appended to the basic file.

LAND TITLE STATUS: Subsection 5 (b) lands.

STATUS: The subject land is currently under Revocable Permit No. S-5232 to Mr. Lafayette Young for pasture purposes.

ZONING: State Land Use Commission District Boundary
Classification: Agricultural District
Maui County Zoning: Agriculture

AREA: Approximately 5,883 square feet for Easement A.
Approximately 4,577 square feet for Easement B.

PURPOSE:

1. Right, privilege and authority to access, construct, use and maintain a roadway over, under, across and on State owned land.
2. Right, privilege and authority to construct, use and maintain utility lines over, under, across and on State owned land.
3. An immediate right of entry for site control purposes on State owned land.

AS AMENDED

August 21, 1997.

ITEM D-21

EXHIBIT A

**METHOD OF
PAYMENT:**

Lump sum (up front).

CONSIDERATION:

To be determined by an independent appraisal, same subject to approval by the Board Chairperson.

**OTHER TERMS
AND CONDITIONS:**

Authorize the Board Chairperson to impose additional terms and conditions which may best serve the interest of the State.

**CHAPTER 343 -
ENVIRONMENTAL
ASSESSMENT -**

The proposed easement areas will be located over existing roadways. Therefore, the proposed use does not involve any intensification of its existing use. Accordingly, pursuant to Section 11-200-8 (1), Exempt Classes of Action of the Environmental Impact Statement Rules, it is recommended that the Board classify this use as exempt from the preparation of an environmental assessment and acquisition of a negative declaration.

REMARKS:

The subject request has resulted from a very unique situation. A Grant of Easement, dated December 2, 1986, was issued to Mr. Vijay Arthur Wenk for the above described Easement A (Land Office Deed No. S-27,604). Mr. Wenk sold his property and assigned the subject easement to Mr. Douglas Faulkner. The easement assignment was approved by the Board on October 9, 1987, under Agenda Item F-1-e. Completion of the assignment documents ran across some difficulty due to Mr. Faulkner's being committed to a mental institution periodically. During this period, the property was sold to the Starks. But due to Mr. Faulkner's situation, the assignment documents were never completed and on January 12, 1996, under Agenda Item F-18, the Board approved an amendment from their previous action to change the assignee from Faulkner to the Starks. To further complicate matters, this office was notified later that Mr. Wenk passed away during this period.

Completing the assignment documents, if at all, would be cumbersome and timely. Since there is a need for the Starks to expedite this easement acquisition and also their request for an additional easement, it was decided that the simplest solution would be to sell a new easement to them.

Easement A will be used to access the main dwelling on property identified by Tax Map Key: 2-9-03: 12. The reason for the acquisition of Easement B is that the applicants plan to construct a second dwelling on the same parcel but due to its steep terrain, can only be accessed from the State parcel.

RECOMMENDATION:

THAT THE BOARD:

A. Rescind their following previous actions:

1. The January 12, 1996 Agenda Item F-18 approval for the assignment of the subject easement to Christopher and Lani Stark;

2. The October 9, 1987, Agenda Item F-1-e approval for the assignment of the subject easement to Douglas Faulkner; and
3. The issuance of Land Office Deed No. S-27,604 to Mr. Vijay Arthur Wenk.

B. Authorize the direct issuance of perpetual, non-exclusive easements to CHRISTOPHER and LANI STARK for access and utility purposes, covering the above described area under the preceding terms and conditions which are by this reference incorporated herein, and the following additional terms and conditions:

1. This Land Board authorization to purchase a perpetual, non-exclusive easement from the State shall not be assignable unless the Grant of Non-Exclusive Easement is issued and recorded at the Bureau of Conveyances, or unless the access roadway is constructed and completed in accordance with County of Maui standards.
2. Prior to the issuance of the Grant of Easement document, the applicant shall be responsible to obtain subdivision approval for the subject easement areas from the County of Maui and providing same to the Maui District Land Office.
3. Standard abandonment clause.
4. Standard indemnity and hold harmless clause.
5. Standard relocation clause.
6. Standard assignment premium clause.
7. Standard sublease clause with the standard sublease premium clause.
8. Said easement shall not be used at any time by the Grantees, their guests or invitees for parking, storage, dumping of trash, and/or other purposes.
9. The Grantees shall be allowed six (6) months from the date of this Board approval to provide the Maui District Land Office with the necessary documentation and appraisal deposit required to complete the subject sale. Failure to do so by the Grantees will automatically terminate this Board authorization.

D-21 Approved as Amended--The Board amended the staff recommendation by adding condition B.14 to read as follows:

14. The applicant and successors indemnify the state for the actions taken to rescind its prior actions authorizing the issuance of an easement to Mr. Wenk and subsequent assignment of the same easement to Mr. Faulkner.

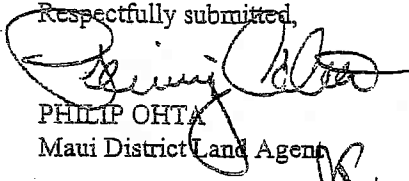
C.

10. Prior to the termination of the subject easement or the assignment of easement, grantee shall conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency and the Department of Land and Natural Resources. Neither the termination nor assignment will be approved by the Board of Land and Natural Resources unless this evaluation and abatement provision is completely executed.
 11. Easement documents shall be reviewed and approved by the Attorney General's Office.
 12. Other terms and conditions as may be prescribed by the Chairperson.
 13. The Grant of Easement shall have the approval of the Governor of the State of Hawaii and the State Legislature.
- Approve the site control right of entry subject to the following terms and conditions:
1. Commencement date of the subject right of entry shall be August 22, 1997.
 2. The applicants shall indemnify and hold harmless the State of Hawaii, its officers, employees, and agents harmless against all claims for personal injury, death, or property damage caused by or in any way connected with the permission granted herein.
 3. The applicants shall obtain a liability insurance policy with the State of Hawaii named as an additional insured with the following minimum limits established on said policy:

Bodily Injury	\$500,000.00
Property Damage . . .	100,000.00
Medical Coverage . .	5,000.00
 4. The applicants shall be responsible for cleaning and/or restoring the areas to its original condition or to a condition satisfactory to the Department of Land and Natural Resources upon completion of construction.
 5. The applicants shall comply with all applicable rules, regulations, ordinances and statutes of the Federal, State and County governments relative to the use of the subject areas, including those relating to public health and safety.

6. The Department of Land and Natural Resources and its Chairperson reserves the right to impose additional terms and conditions if it is deemed necessary.

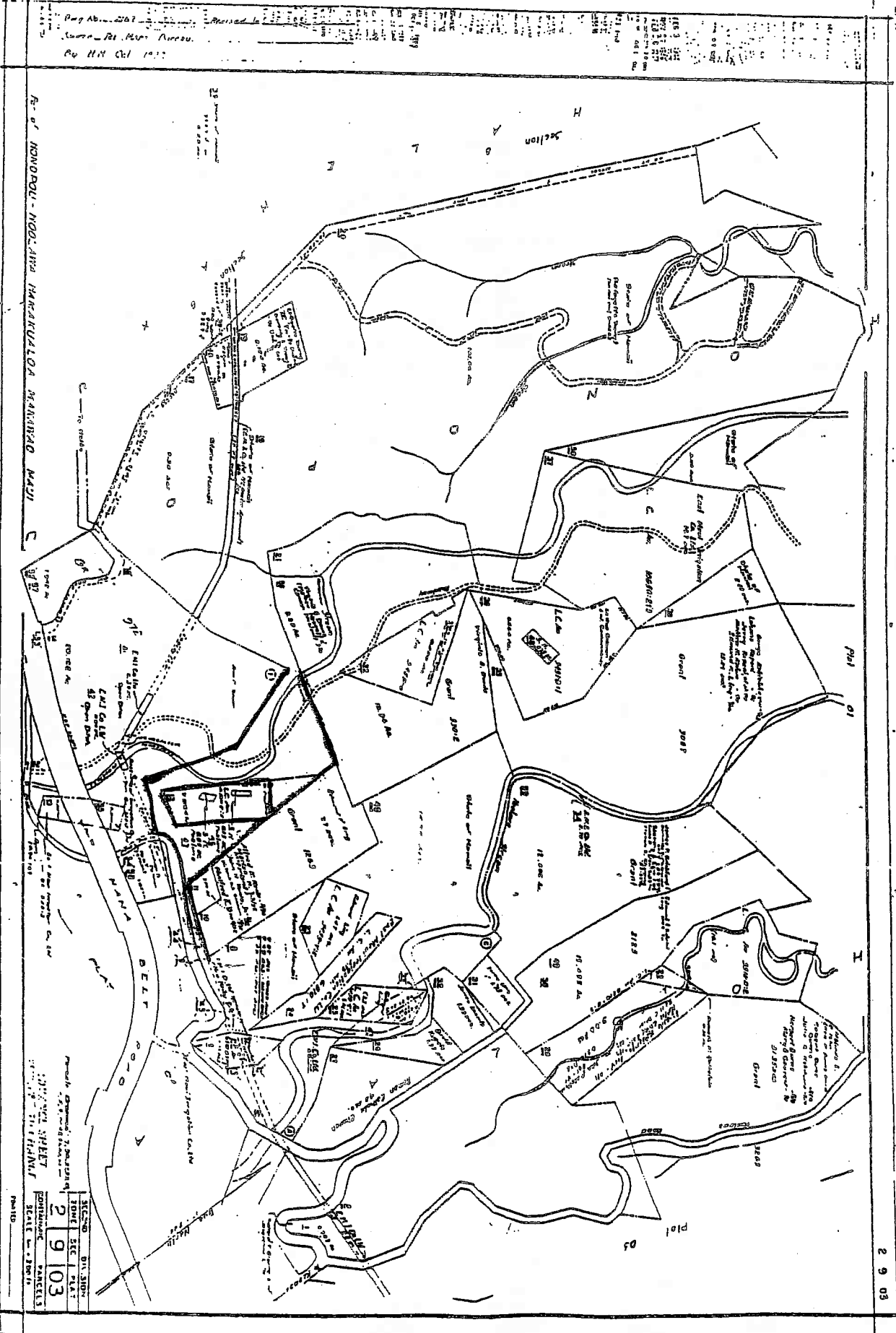
Respectfully submitted,


PHILIP OHTA
Maui District Land Agent

APPROVED FOR SUBMITTAL:


MICHAEL D. WILSON, Chairperson

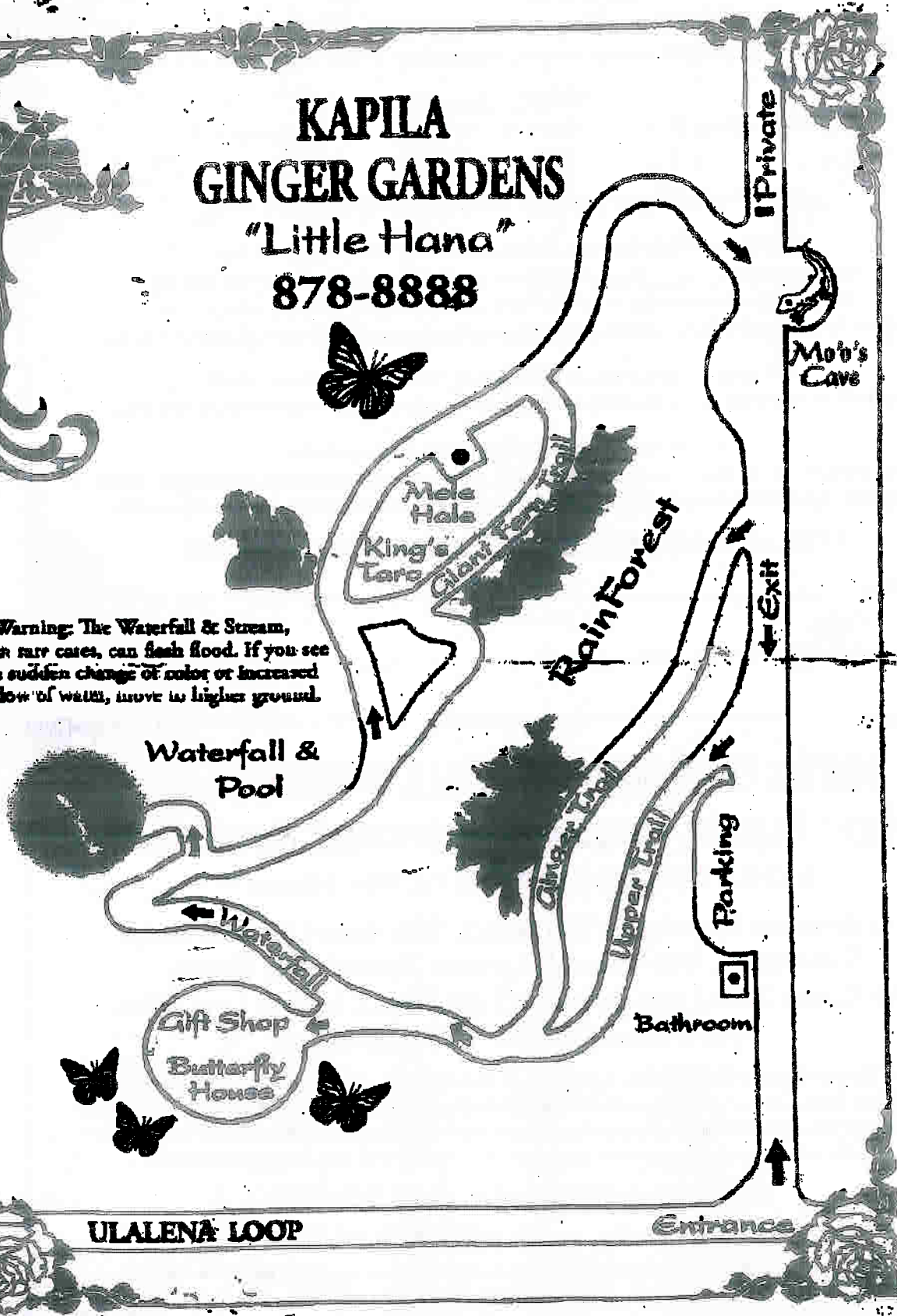
LAND BOARD EXHIBIT A



FRONT SIDE

KAPILA
GINGER GARDENS
"Little Hana"
878-8888

Warning: The Waterfall & Stream,
in rare cases, can flash flood. If you see
a sudden change of color or increased
flow of water, move to higher ground.



GINGER—THE EMPEROR OF THE HERB WORLD

Out of the 20,000 exotic varieties of ginger, Kapila Ginger Gardens features the best fragrant, edible and medicinal varieties in our garden and products. Here at the gardens many aromatic and medicinal gingers grow year round.

Visit our lovely outdoor Ginger Garden Gift Shop where the finest aromatic & gourmet ginger products await you. Take the gift of Maui Ginger with you...

For thousands of years, Ginger has been treasured for its many benefits and healing properties. Ginger brings a feeling of well-being, comfort, renewal and rejuvenation. For this reason our Ginger Gardens is sometimes called "The Garden of Youth."

Awaken Your Inner Song of Harmony with the Magic of Ginger!

"There is no modern drug that can rival the healing power of Ginger"

- Paul Shulick

"If I should have but a penny let that penny be spent on Ginger Bread"

— William Shakespeare

"This is the absolute best nature & agricultural tour in Hawaii and we've been on them all!"

— Jean and Dan Ness / Sonoma CA

707-935-5312

MAUI'S ULTIMATE WATERFALL WONDERLAND!

MAUI'S PREMIER WATERFALL / RAINFOREST ADVENTURE!

KAPILA GINGER GARDEN'S "Little Hana" *

**HIGHLIGHTS: CASCADING WATERFALL, THE KING'S SACRED POOL,
RAINFOREST, THE WORLD'S LARGEST PREHISTORIC FERNS,
THE KING'S TRAILS AND ANCIENT TARO WALLS, MO'O'S LAVA CAVE,
AND A MONARCH BUTTERFLY PAVILION**

Our Nature Wellness Walking Hike can be self-guided or join in with one of the guided tours at 11:00am Daily. On our guided tour you'll learn why Ginger has been revered by so many cultures around the world for its timeless fragrance, spice and medicinal properties. You will also learn about the Hawaiian sustainable approach to nature, their medicinal plants, histories & legends.

FOR MORE INFORMATION, CALL: 878-8888

www.kapilagingergardens.com [em: kapilagingergardens@littlehana.com](mailto:kapilagingergardens@littlehana.com)

*Kapila Ginger Gardens is also nick-named "Little Hana" as it's lush tropical ambience is similar to that of Maui's famed Hana District. That's why we say it is "A Taste of Hana without the Drive."

coconut wireless news flashes

NEW WATERFALL WELLNESS WALK BY MAUI ECO-ADVENTURES

A new, easier hike option for your guests is the Waterfall Wellness Walk presented by Maui Eco-Adventures—the short drive from Kahului to this tropical paradise will take you along the famous north shore of Maui through historic Paia Town, past the world famous surfing and wind surfing mecca of Ho'okipa, towards the final destination on the road to Haana.

Upon arrival, naturalist guides will take you on a gentle hike through an exclusive

private estate complete with a beautiful running waterfall with a large natural swimming pool, ginger gardens, royal kalo le'i (taro terraces), and a lush exotic botanical rainforest. Your tour includes an orientation on edible, medicinal and ornamental ginger as well as other native Hawaiian plants.

After learning about the cultural and environmental significance of this special place in history and nature, everyone can take a refreshing swim in the large waterfall pool—towels provided by the guide. After the dip, the group will stop by the Ginger Garden Gift Shop to learn more about the invigorating and rejuvenating effects of the ginger plant. Guests may even get the opportunity to go into the Butterfly Pavilion to experience the beauty of the Monarch butterfly, weather permitting.

The Waterfall Wellness Walk is offered daily by Maui Eco-Adventures from 8am to 12noon with a minimum of four guests, 12 passengers maximum per van. The cost is \$90 per person (introductory price of \$85 through 3/15/06)—hiking boots or sneakers recommended, and dog a swimmer. Tour also includes: South and West Maui hotel pick-ups, a continental breakfast, water and cookies. For trip reservations, call 661-7720 or book online at ecomau.com.

SEA TALK SERIES: "DEEP SEAMOUNTS
FROM NEW ZEALAND TO HAWAII"
AT THE MAUI OCEAN CENTER

continues on Tuesday, January 17, at 6pm with "Deep Seamounts from New Zealand to Hawaii: Submersible Video of Active Volcanoes and Gardens of Life Thousands of Feet Deep" by Dr. Christopher Kelley and Terry Kerby, the respective program biologist and chief submersible pilot from the Hawaii Undersea Research Laboratory (HURL). This presentation will take guests on an odyssey of discovery conducted through the last few years in Hawaii's own submersibles, the Pisces IV and the Pisces V.



Ashley Stephens holds a monarch butterfly in the Butterfly Pavilion.
Photo by Lani Siro

Deep below us hidden from view by thousands of feet of pitch-black cold water under tons of crushing pressure is where mountains have been created for millions of years. In the Pacific alone, it is estimated there are 30,000-50,000 of these deep "seamounts," with new ones constantly forming. Almost all of these are

completely unexplored. What could they be like? What strange, exotic animals live on them? During the first half of this Sea Talk guests will be able to witness the active volcanoes of new seamounts still under formation between New Zealand up to American Samoa.

Video taken from the deep-sea submersible captures the creatures that thrive in the superheated, chemical-rich water spewing out from their hydrothermal vents. The second half of the presentation explores the older, dormant seamounts in our own backyard: The Northwestern Hawaiian Islands. Strange looking sharks and incredible coral and sponge gardens will be revealed; their existence was completely unknown until having been visited in 2003.

About the speakers: Terry Kerby has been the chief submersible pilot for HURL since 1980 and has completed hundreds of dives around the Hawaiian Islands and in the central Pacific. Kerby has also assisted with the production of movies such as "Abyss," providing technical

continued on next page..

THE 2006 WENDY'S CHAMPIONS SKINS GAME

FEBRUARY 5 & 6, 2006 • WAILUA GOLD COURSE



The Wendy's
Champions
Skins
Game
WAILUA, MAUI

Wailua
GOLF CLUB

Member GolfBC group

New Tour! Ambling Around Kapila Ginger Gardens

Experience the Magic of "Hike Little Hana," as Lovingly Called by Visitors

LANI'S TOUR

It's a fifteen-minute drive from Paia Town to the palatial expanse of Lani Star's Kapila Ginger Gardens. A tropical paradise comparable to that of Hana without the 90 bridges and 600 turns—hence the nick-

name "Hike Little Hana"—this eight-acre private estate is the perfect destination to visit for a morning garden tour with ginger snacks. It feels like you are further away than you are!

Located across the street from Twin Falls, it is actually comprised of many types of garden sec-

tions and minor walk-hikes, and other features like a cascading waterfall with expansive pool and a running stream, a hidden fern cave, exotic singing gardens with a *mele hale* (singing house), the royal *hale lei* (taro terraces) of King David Kalakaua and the Butterfly Pavilion. It's an all-in-one botanical experience for anyone wanting to see the raw beauty of Hawaii, and an opportunity to meet the owner and/or her trained guides who can share stories about the history, culture and meaning of the place.

We are greeted by Lani at the guest parking lot just down to the left of 'Ulualea Loop, and immediately she has captivated us with her airy, fresh approach to this project and her ideals and hopes for happiness for herself and others in life on the grander scale. She describes her bohemian, artistic upbringing in Oahu—her mother was a gourmet chef and her father was an architect—and shares the memory of her family farming *taro* together at the lunar cycle on Kauai, playing music and singing, all to get back to nature. "We would get lost in the mountains and feel the orchestra of the forest, tuning into the melodic life here, one that parallels no other," says Lani. "I wanted to share this feeling of Hawaii with others."

Of Hawaiian descent and currently living on Maui, it seems only right for her to "submit," if you will, her lush, tropical rainforest to the world of ag and eco-tourism. Lani also makes it fun, calling on her creativity and life experiences to permeate the process. She is a

trained gourmet chef, a world-class musician and vocal trainer (she plays the flute and percussion, sings, and trained Camille Velasco, one of Hawaii's favorite American Idol contestants), she ran a spa retreat and wellness center on the Big Island, and seems quite knowledgeable about the botany of her own property. Lani also has a wealth of information in her head about ginger and its invigorating, refreshing qualities as the "emperor of the herb world."

"Ginger has been shown to generally revitalize and invigorate

people," she shares. "It has more antioxidants than any other plant known to man. It can purify you, helps with longevity, and eliminates free-radicals. And, the whole plant can be used for edible, medicinal and ornamental purposes."

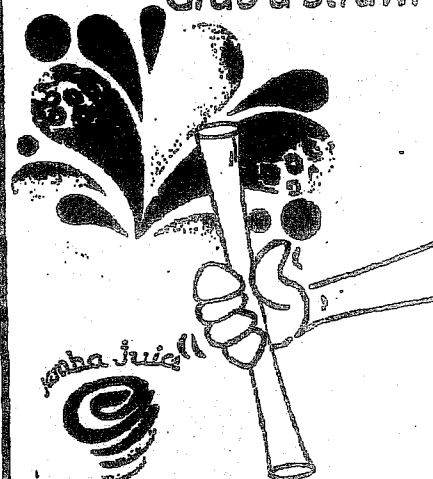
We walk across the property as Lani tells us about her larger vision for the gardens and the company, describing a spa and retreat center, educational learning center, and running through a list of culinary products and bath and bodyline items; she hands me a ginger bar of soap as a gift. Thousands of types of ginger grow on her property, and much of it harvested for consumptive use. Looking around the tall, forest canopy some 100-ft. high (it's really impressive!) she points out *lilikoi*, green guava, a rose apple tree, shell ginger, sandal wood, 50-year-old macadamia nut and 'ohia trees, koa, ti leaf plants, and hapu'u tree ferns, to name a few. It is ALL there for you to see, touch, appreciate and remember. You have to visit to believe it—it's a remarkable cross-section of species.

Tours are offered daily at 9am and 10:30am, and the cost for each per person is \$75. The Hike Little Hana Tour runs from 9 to 10:30am and includes ginger fruit salad and a ginger pastry; the Kapila Ginger Garden Tour goes from 10:30am to 12noon and includes ginger chicken salad, ginger rolls, and the ginger pastry; both also include ginger iced tea and bottled water. Hiking boots and swimwear with towels are recommended. Call 878-8988.



Ashley Stepanek helps show just how big the taro-like plant is behind her at Kapila Ginger Gardens.
Photo by Lani Star

Lighten Up. Grab a Straw.



Enlightened Smoothies
Delicious, Nutritious and Lower Calorie

Available in the following locations: Maui, Oahu, Kauai, Hawaii

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EXHIBIT B

A Exotic Botanical Gardens on Maui's Famed Hana Highway!

TARGET: DEVELOP KAPILA GARDENS INTO A TRANSFORMATIONAL BOTANICAL GARDENS FOR MAUI TOURISTS AND COMMUNITY

Kapila Gardens, a full use 8 acre property on Maui's Hana Hwy, is the site for a proposed multipurpose tourist attraction. Located 15 minutes south from Maui's Kahului Airport, Kapila Gardens is a unique botanical gardens with towering 100 foot high mango trees, rare plants, Hana Highway's first waterfall and designated as an ancient historical sight. Planned activities include:

- * Nature hikes and waterfall access for admission fee
- * Healing Time Gardens with Hawaiian herbs
- * Wedding Bio at waterfall
- * Butterfly Arboretum open to hikers
- * Butterfly sales for weddings
- * Ancient Hawaiian Historical Sight Designated by Historical Society
- * Gift shop featuring private labeled products with a "White Ginger Flower" theme
- * Web site for flower and product sales
- * Community outreach for Hawaii's youth, children and seniors.

Future expansion possibilities to Kapila Gardens include: Hawaiian Cultural Museum, Healing Retreat Center and Spa, Amphitheater for music and Hawaiian "talk story" events.

TIMELINE: 3 months to opening for Phase I

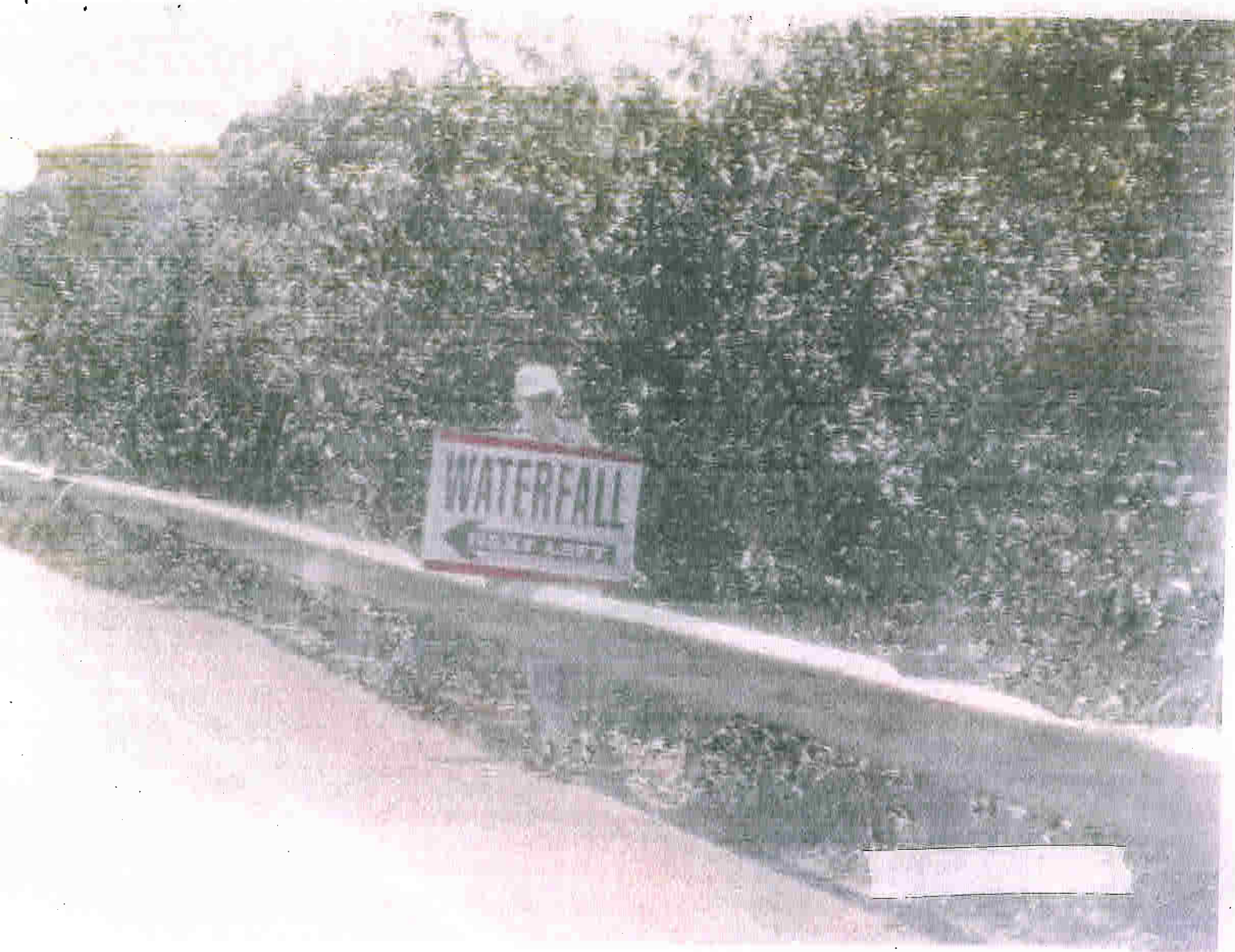
FINANCIAL: Phase I is budgeted to cost \$100,000.00 and expected to generate minimum revenues of \$612,000.00 with a profit of \$392,000.00 for the first year. Second year revenues are projected at \$852,000.00 and a profit of \$592,300.00.

PHASE I costs include: Landscape Master Plan, Parking Lot and Toll Booth, Entrance and Interior Landscape, Trail Upgrade, Wedding Gazebo, Butterfly Arboretum, Signage, Marketing & Advertising, Onsite Management, LLC formation and Investor Agreement Drafts.

STATUS: Kapila Gardens is two thirds complete with existing waterfall, nature trails and exotic Hawaiian trees & plants. Graphic design for logo and corporate image are 50% completed.

ACTION: Create parking lot and toll booth, landscape entrance, rock trails, install plant ID signs, build wedding Bio, market promo rate cards and print advertising

CONTACT: Lani Star, PHN: 808-280-8119, Bruce BecVar, PHN: 970-901-8724



Hand held sign at Hana Highway
and Ulalena Loop Road observed
in March, 2006



Sign at entrance to
Ulalena Loop Road along
Hana Highway

EXHIBIT C



Sign located along Ulalena
Loop Road directing traffic
to State lands at
TMK: (2) 2-9-3:20 por.



Sign at entrance to
Easement A on State lands
along Ulalena Loop Road

EXHIBIT C



Signs on State land along
Easement A directing
traffic toward Easement B



Traffic congestion on
Ulalena Loop Road caused
by overflow visitors to
Kapila Ginger Gardens

EXHIBIT C



Toll booth attendant
collecting fees from
visitors to Kapila Ginger
Gardens on Ulalena Loop
Road. Note the apron
around his waist used to
collect money and return
change.



Ms. Lani Stark collecting
fees from tourist visiting
Kapila Ginger Garden

EXHIBIT C



Ms. Lani Stark directing
traffic to Kapila Ginger
Garden on Ulalena Loop Road .

EXHIBIT C



Parking lot attendant
on Easement A

EXHIBIT C



Parking lot along
Easement A to access
Kapila Ginger Garden

EXHIBIT C



Officer Randy DeCabra
questions Ms. Lani Stark
and Mr. Robert Williams
regarding unauthorized
grading and grubbing of
State lands and Ulalena
Loop Road

EXHIBIT D



Backhoe operated by
Mr. Robert Williams to
grade and grub State
lands and Ulalena Loop
Road

EXHIBIT D



Backfill area along Ulalena
Loop Road adjacent to State
lands

EXHIBIT D



Backfill area on State
lands with no erosion
control measures



Officer Randy DeCambra
speaking with State
tenant Lafayette Young
regarding unauthorized
grading and grubbing on
encumbered State land

EXHIBIT D



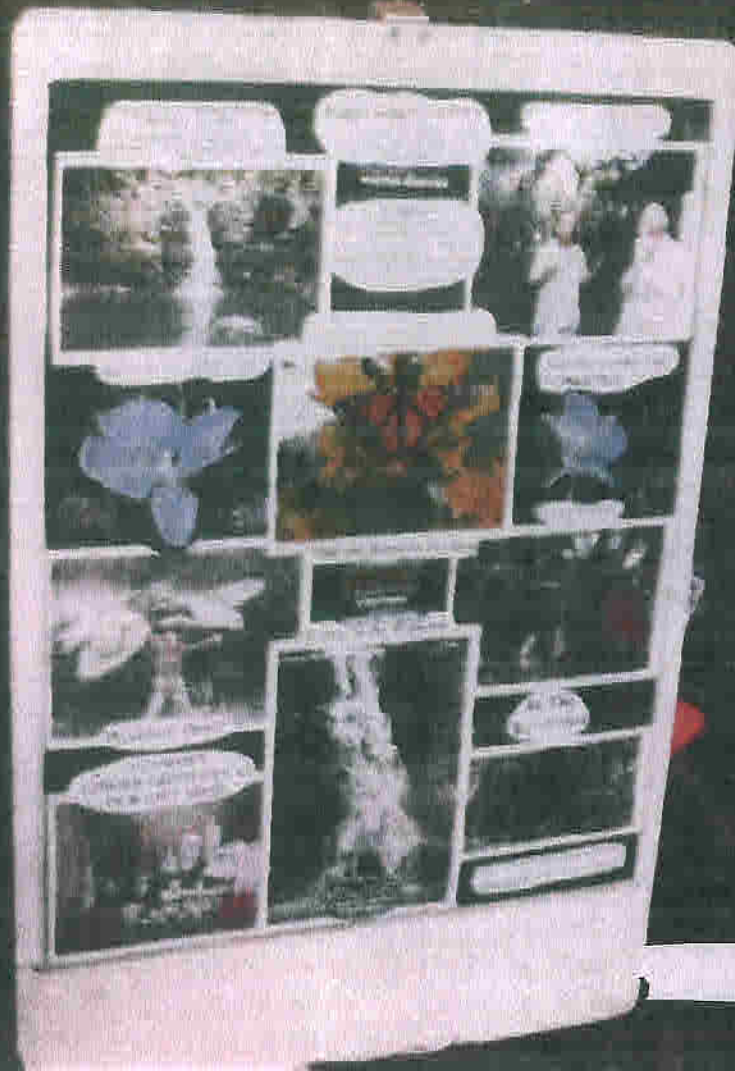
Port-a-Potty on State land
adjacent to parking lot
and Easement A

EXHIBIT E



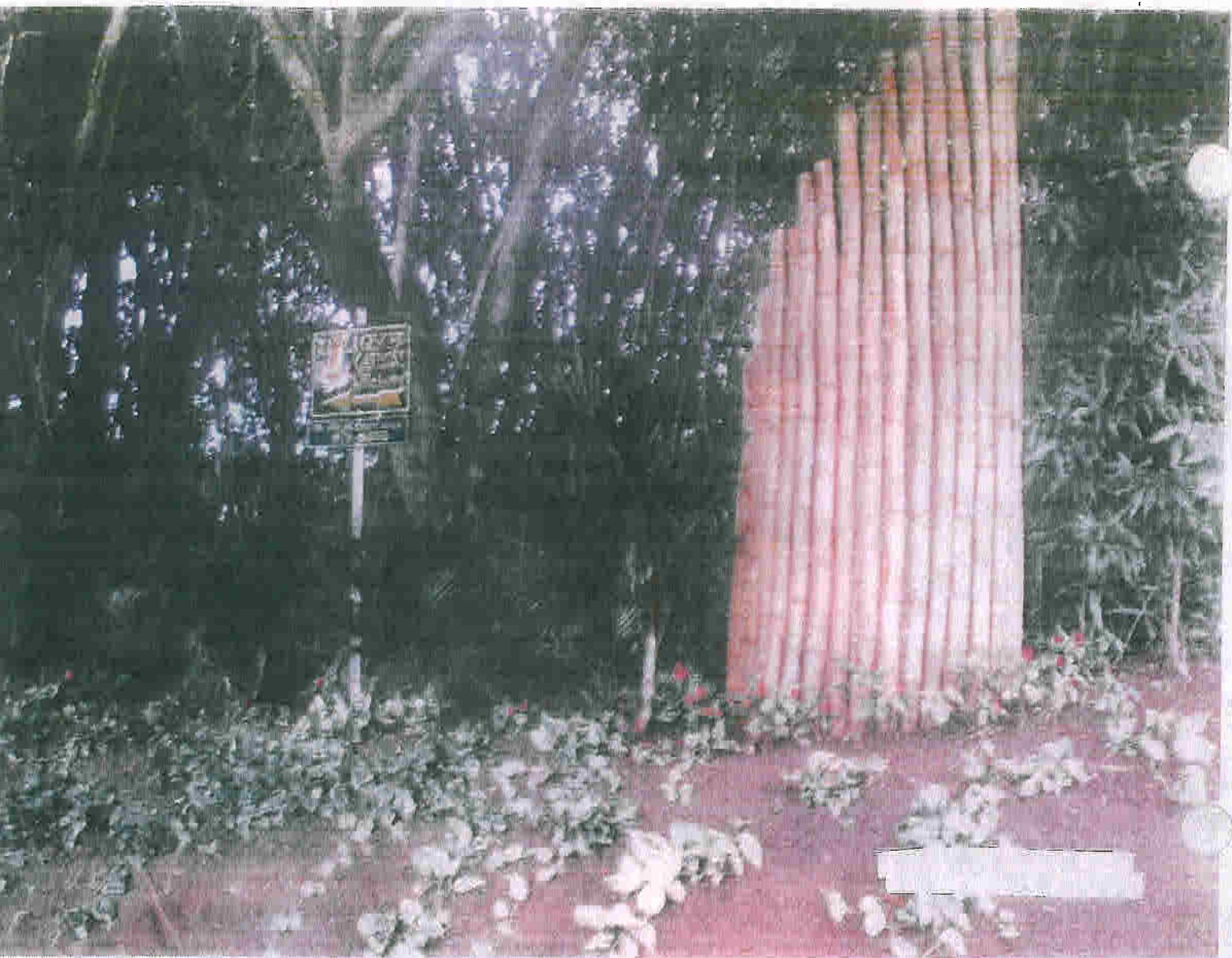
Toll booth on State land
along Ulalena Loop Road
at entrance into Easement A

EXHIBIT E



Signage describing
activities in
Kapila Ginger Gardens
along Easement A

EXHIBIT E



Signage and barrier to
conceal electrical
equipment on State land.
Electrical equipment not
up to County standards

ALAN M. ARAKAWA
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

CHAE L. MIYAMOTO
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
AND ENVIRONMENTAL MANAGEMENT
DEVELOPMENT SERVICES ADMINISTRATION

250 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

November 29, 2005

RALPH M. NAGAMINE, L.S., P.E.
Development Services Administration

TRACY TAKAMINE, P.E.
Wastewater Reclamation Division

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

Solid Waste Division

Mr. Laf Young
HC 1, Box 42
Haiku, HI 96708

SUBJECT ELECTRICAL SERVICE AT ULALENA LOOP
TMK (2) 2-9-003;

Dear Mr. Young:

This letter is in response to your letter dated 4 November 2005 regarding an unsafe electrical service at the Subject property. In response to your earlier letters, Request For Services No. 05-0002299 was created on June 27, 2005 to investigate your concerns. A limited inspection of the property entrance on July 11, 2005, confirmed that electrical wiring was installed along the ground creating an unsafe condition. Further investigation within the property was prohibited due to the posting of no trespassing signs. Warning letters were sent to the Property Owner, Ms. Lani Stark advising her that she had until January 7, 2006 to resolve the violation. If this violation is not resolved by this date, then a Notice of Violation including monetary fines will be issued to Ms. Stark. If the violation continues to remain unresolved, then the violation will be forwarded to the Department of Corporation Counsel for enforcement.

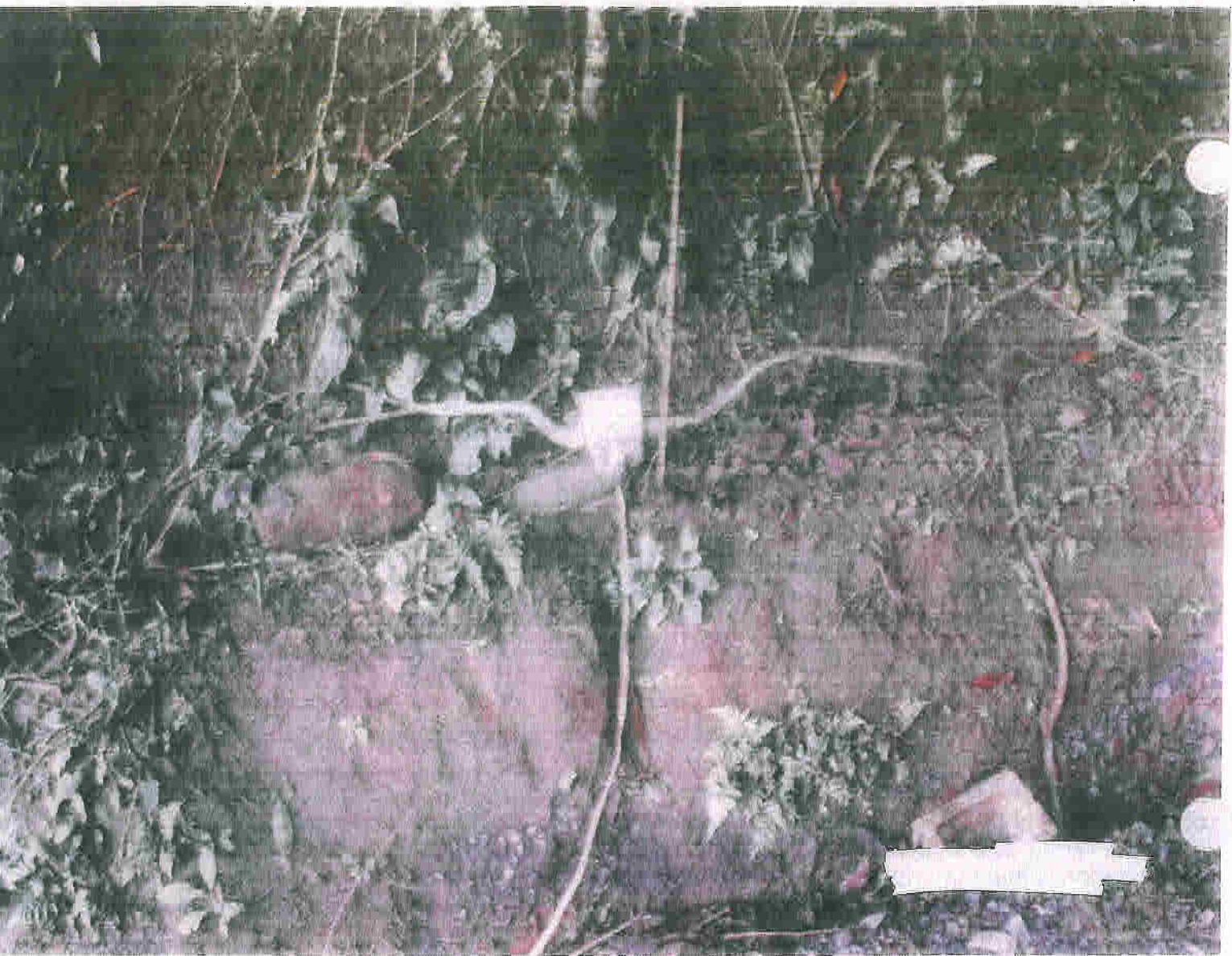
Regarding the activities taking place within the property, due to the foliage and trespassing signs, we are unable to investigate and confirm these allegations without Ms. Stark's approval to access her property. If these activities are visible from your leased property, please provide us with a contact phone number so the investigating inspectors can make arrangement to meet you at your property.

If you have any questions regarding this letter, please call me at 270-7255.

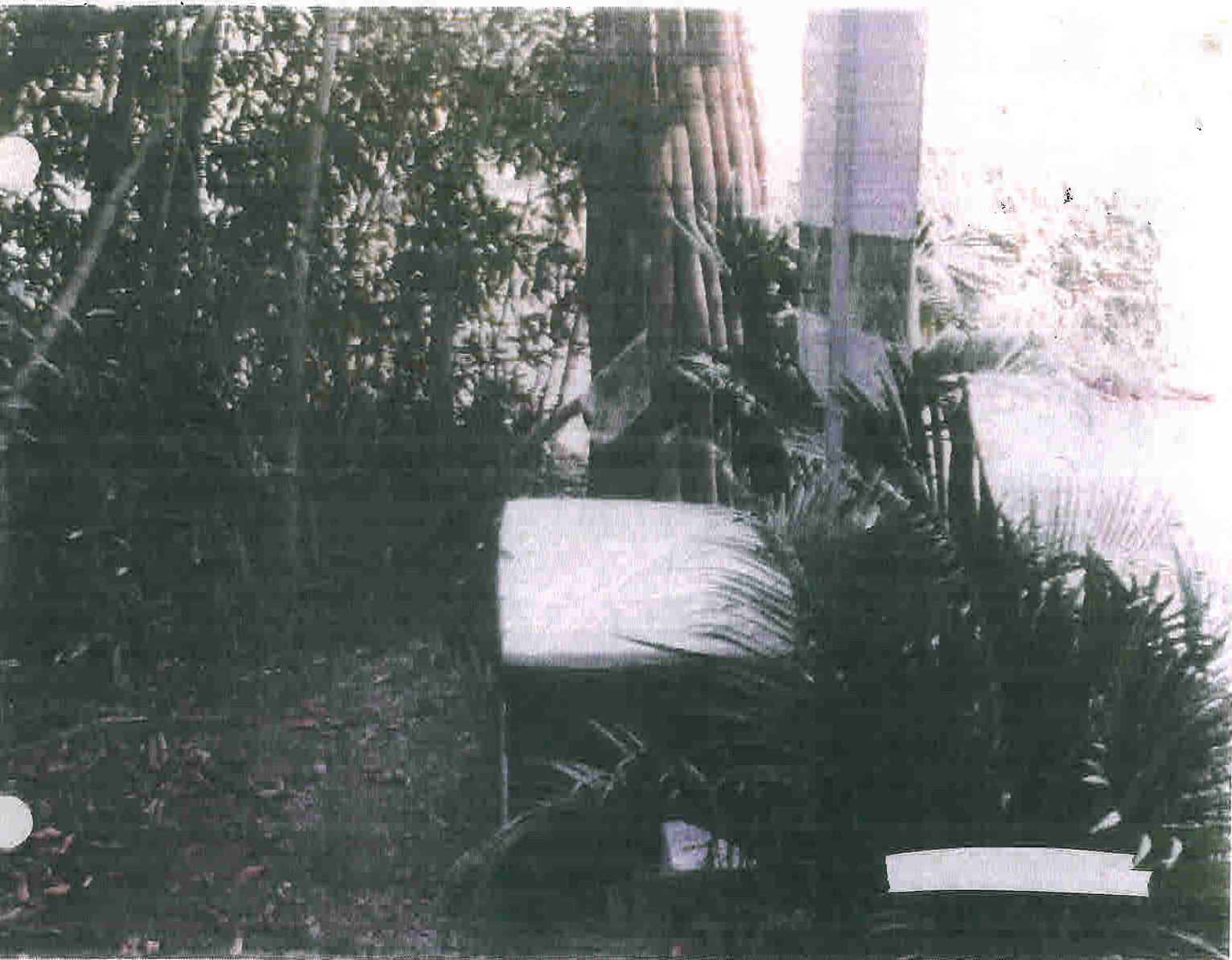
Sincerely,

A handwritten signature in black ink, appearing to read "Greg A. Nakao".

GREG A. NAKAO
Electrical Engineer



Above ground electrical
box and wires not built
to County standards along
Easement A



Storage box on State
land along Easement A



Beverly A Young
<byoung@maui.net>

04/07/2006 05:16 PM

To Ann Bauer <h.ann.es@t-online.de>

cc daniel.l.ornellas@hawaii.gov, dave@ihj-law.com

bcc

Subject progress report



Illegal 120volt water pump hidden on State land to deliver water from the Honopou Stream to her rental units. Exposed electrical wires on the surface and non-waterproof terminations will interest the County electrical inspector on Monday.

EXHIBIT "E"

Dan: FYI - regarding Lani Stark!
DISTRICT
LAND DIVISION

12 September 2005

2005 SEP 15 PM 12:12

Lani:

It has come to my attention and that of Dan Ornellas, Land Agent for DLNR, that you are still trying to manifest access to the Ralston Pool by encroaching on State land and perhaps the Ralston land.

It is incumbent upon you to demonstrate to me and others the location of your four property pins that separate your land from the State land. Several points-on-line will also be helpful along your longest boundaries.

I advise that you engage a licensed registered surveyor to survey the boundaries so we can all visualize, once and for all, what is yours to develop.

The improvements you have undertaken, starting at the widened and landscaped entrance and continuing on to what is clearly a parking area complete with cutoff utility pole framing and landscaping are clearly OUTSIDE of your 15 foot wide access easement.

Your continuing improvements to the Doug Faulkner originated road (built without my or DLNR's approval) to the lower portion of what I hold to be State Land is in violation of my Revocable Permit and County building standards.

Improving land that does not belong to you, without grading permits or permission of any kind is actionable and I am prepared to bring suit against you real soon. To forestall this action you must complete the survey work and demonstrate to me, the State and Ann Ralston's attorney that you are operating well within your boundaries and rights as a landowner.

Cease and desist the improvements approaching the pool and any further improvements to State land outside of your 15 foot wide access easement.

Get the utility and phone lines off of the surface and brought up to State and County of Maui standards.

And please, no more gifts and homilies to living cooperatively as good neighbors.

Keep the slogan that "good fences make good neighbors" as your daily mantra unless you want to defend your actions in Second Circuit Court.



Lafayette Young

Revocable Permit Holder: RP-5232

HC 1, Box 42
Haiku, HI 96708

cc: D. Ornellas, A. Ralston-Bauer, D. Jorgensen

EXHIBIT "G."

3 April, 2006

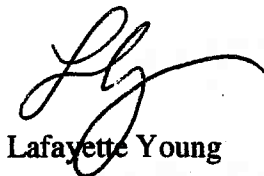
RECEIVED
HAWAII DISTRICT
LAND DIVISION

2006 APR -3 PM 1:54

Lani Stark
1135 Makawao Ave. Unit 108
Makawao, HI 96768

One more time;

Cease and desist trespass for private or commercial reasons over the State Land I hold under lease immediately. TMK 2-2-9-03:17. Remove any and all improvements, i.e. toilet, tents, storage lockers and signs that you cannot prove, without a doubt, are on your land. Confine your ingress and egress to State Land that you have under Revocable Permit.



Lafayette Young

HC 1, Box 42
Haiku, HI 96708

Cc: D. Ornellas, DLNR ✓

EXHIBIT " G "

LAWRENCE N. C. ING
PAUL L. HORIKAWA
DAVID M. JORGENSEN
GORDON W. STEWART, P.C.†

†A Law Corporation
Also Admitted in Oregon

2145 WELLS ST. STE. 204
WELLS STREET PROFESSIONAL CENTER
WAILUKU, MAUI, HI 96793-2222
(808) 242-4555 • FAX (808) 244-6964
dave@ihj-law.com

MAUI DISTRICT
LAND DIVISION

2006 MAR 13 PM 3:00
LAW OFFICES OF

ING, HORIKAWA, JORGENSEN & STEWART

a Limited Liability Law Partnership

March 13, 2006

VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED AND REGULAR MAIL

LANI STARK
120 Hana Highway #9-109
Paia, Maui, Hawaii 96779

Re: TMK (2) 2-9-003-014;
Ann R. Bauer Honopou Property

Dear Ms. Stark:

This office represents Ann R. Bauer, the owner of the real property located on Hana Highway in Honopou, identified as Tax Map Key No. (2) 2-9-003-014.

Ms. Bauer has for some time been communicating with you, directly and through various agents, about her objections to your use of her land for commercial activities you are running from your nearby property. In fact, I understand you had previously requested permission from Ms. Bauer to engage in such activities and your request was denied. Despite her strong objections and her denial of your request, we have been informed that you continue to enter on to her property and conduct tours of her land.

You are hereby formally advised that you do not have permission from Ms. Bauer to enter onto or use her land for any purpose and that you are specifically prohibited from conducting any commercial activities on her property. In the event you continue to use her property for commercial or any other purpose without her express written permission, you will be considered a trespasser and Ms. Bauer will pursue all appropriate action against you.

You are also hereby advised that you will be held personally accountable for any damages you have caused to my client's property. For example, I've been informed that you have cut into hills, removed soil, and dumped a lot of dirt and other materials into gulches. My client will expect you to restore all areas of her property to their original condition, including removing any debris from gulches where you have thrown it.

For your information, I have already reviewed prior correspondence between you and Ms. Bauer concerning your belief that you are entitled to use her land. Contrary to your assertions, it is clear from the relevant documents that no permission was ever properly granted to you to use the property.

EXHIBIT "G"

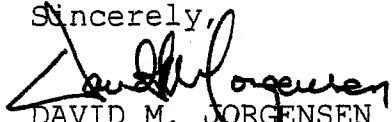
LANI STARK

Page 2

March 13, 2006

Your immediate attention to this matter is expected.

Sincerely,



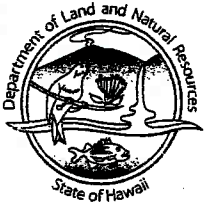
DAVID M. JORGENSEN

Data/ Dave/Letters/Bauer/Lani Stark (03-13-06)

c: Client (via e-mail)
✓ Daniel Ornellas, DLNR (via hand-delivery)
Laf Young (via e-mail)

EXHIBIT "G"

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

54 High Street, Room 101
Wailuku, Hawaii 96793
PHONE: (808) 984-8103
FAX: (808) 984-8111

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

NOTICE TO VACATE

TO WHOM IT MAY CONCERN:

THIS IS TO INFORM YOU that the lands situate at Tax Map Key: (2) 2-9-003:020 are owned by the State of Hawaii.

ANYONE placing any structures to include, but no limited to, a dwelling, lean-to, tent, campsite, vehicles, equipment or materials; anyone occupying, camping and/or residing on said lands, without the written authorization of the Board of Land and Natural Resources, State of Hawaii, is encroaching upon public lands in violation of Chapter 171-6, Hawaii Revised Statutes, and shall be subject to a fine of up to **\$500.00 per day**, plus charges for administrative costs incurred by the Department of Land and Natural Resources, State of Hawaii, and for payment of damages.

NOTICE TO VACATE is hereby given to all persons occupying, camping and/or residing on said lands and that you must vacate said lands and remove all structures, vehicles, and personal belongings placed thereon.

ANY AND ALL PERSONS FOUND OCCUPYING, CAMPING AND/OR RESIDING ON SAID LANDS AFTER 12:00 P.M., MARCH 30, 2006, SHALL BE SUBJECT TO A FINE OF UP TO \$500.00 PER DAY PLUS ADMINISTRATIVE COSTS FOR VIOLATION OF THE PROVISIONS OF CHAPTER 171-6, HAWAII REVISED STATUTES, AND FOR PAYMENT OF DAMAGES.

FURTHER, ANY AND ALL FIXTURES, EQUIPMENT, STRUCTURES, VEHICLES, AND PERSONAL BELONGINGS PLACED, MAINTAINED, AND/OR FOUND ON SAID LANDS AFTER 12:00 P.M., MARCH 30, 2006, SHALL BE CONSIDERED ABANDONED AND SHALL BE DISPOSED BY THE STATE OF HAWAII AT THE FORMER OWNER'S COST AND EXPENSE.

DATED: Maui, Hawaii, 30th day of March, 2006.

A handwritten signature in black ink, appearing to read "Daniel Ornellas", is written over a horizontal line.

DANIEL ORNELLAS, District Land Agent
Department of Land and Natural Resources

EXHIBIT "G"

the conservation zone and only that part would need to come down. If the Board decides that the part of the wall on conservation land needs to be torn down, OCCL would send out their shoreline specialists to do an on the ground delineation which would specify exactly how much of the wall would need to be torn down to be within regulation.

Mr. Patrick McNulty, applicant, stated that they had put in a permit to build a perimeter rock wall. He and his wife had the contractors start on the front portion of the wall based on the assumption that the permit would be approved. He recognized that the lots neighboring his had seawalls further out than his, but he mentions that he was told that both were grandfathered in due to the date they were built (before 1999). The problem is that while the McNulty's seawall stops at the vegetation line, their neighbors on the Waianae side has a rather large seawall and has built a gate into their cyclone fence (which runs down the sides of the property) which they use to access the beach and they end up crossing into the McNulty's property. They are the main people who are complaining because the McNulty's are cutting off their access to the beach even though they were the ones who chose to build the seawall and there's a public access just a few lots down. There were barbeque pits on the beach in front of his property, from the neighbors, and a large metal dock that he was told to remove. His main point for building the perimeter wall was to safeguard his property, keep trespassers and his neighbors from coming on his property, and cosmetics. He pleads ignorance on his part and there was no shoreline certification because his house is built 55 feet back from the shoreline rather than only the required 40 feet back which therefore makes him exempt from having to have a shoreline certification done. However he believes that there was one done earlier and that there was a metal pin on one side of the property which he thinks marked the shoreline in 1987. He would have taken action sooner if the letter he received back in November didn't give him the option of deferring the matter to the board. He sent everyone the paperwork and chose the option of coming to the board because he wanted to make sure that he couldn't leave the wall. Because of this infraction, it is holding up the rest of the construction on the property therefore he is willing to do whatever is needed to be done.

Unanimously approved as submitted (Johns, Schuman).

Item D-2: Rescind Prior Board Action of December 13, 2002 (Item D-19), Related to the Direct Issuance of Non-Exclusive Easement B to Lani Stark for Access and Utility Purposes, Honopou, Makawao, Maui, TMK: (2) 2-9-03:20 por. (MDLO/Daniel)

Mr. Russel Tsuji gave some background information in which he states that Lani Stark's property is private property that has Kuliana status. Because there was originally no access to the property, the board issued easement A for access for free. Then either she or the previous owner requested easement B. The explanation for needing easement B was that they were going to build a second dwelling on the property. Easement A can service the entire property so staff is asking the Board to rescind its prior Board action on easement. Because there have been various violations, there never was a second dwelling built and Lani Stark is using her property for ecotourism. The purpose of easement B was

for personal use, a second dwelling, and in the prior Board submittal (in 2002), and exemption was claimed on chapter 343 claiming there would be minimal effect. However what has been happening is that due to her commercial agricultural operation, there has been a lot of traffic and complaints being filed. Staff is concerned that the 343 exemption is no longer valid based on the current use (commercial or agricultural tourism) which would create a more adverse environmental impact. There has been evidence of unauthorized grading on state lands which are currently encumbered to Mr. Lafayette, unauthorized encroachments on to state lands encumbered by Mr. Lafayette, which include unauthorized parking and portable toilets on state property. There are unpermitted stream divergence (confirmed with the Commission on Water Resource Management (CWRM)) and unpermitted electrical lines which are deemed unsafe. The violations are the basis for the rescission. Therefore staff is recommending the rescission of easement B even though it is not formally documented.

Lani Stark, applicant, says that without easement B, because of the steep terrain, it makes it impossible for her to access the sides, lower, and back portions of her gardens. There are small trails that have access to these gardens, but are not big enough for her and the staff to get agricultural tools down there (i.e. lawn mowers). Board member Edlao brings up the fact that easement B was not meant for her to access her gardens, but for a second dwelling. Her response is that she is still planning to build the second dwelling, but there were situations that prevented her from doing so. She wants to be in compliance with the state and has already taken care of the electrical lines and is now up to code with the county, the grading of the road has been repaired and replaced, and she has also removed the portable toilet. In regards to the road, she was told by Milton Arakawa, of the county, that it was an abandoned government road and that they would be liable if they didn't grade it and take care of it because they were experiencing flood and erosion problems. There is also an issue about whether she has water rights to the stream. Ms. Stark testifies that she does because it is mentioned in her property deed and from her understanding that it was her right to use that water to irrigate her gardens when there were droughts.

There are questions from the Board about her access to her property in which she answers that while easement A does allow her access to her property, it does not allow her access to the lower and backsides of her property. According to Daniel Ornellas, the Maui District Land Agent, the main trail that she refers to is easement B, which is a 12 foot drive way, and the other trails are about 46 feet wide gravel pathways and there are other pathways that lead up and over state lands to where the waterfall is. Chairperson Young brings up the point that it is her land and that she is responsible for the access to other parts of her land, the State's responsibility is to provide her access to her property, not within her property, and the State does so with easement A. She is allowed to grade on her own property and create other roadways; however her financial situation doesn't allow her to do so. The biggest problem is that she cannot care for her plants in the above mentioned sections of her property and this is where most of her income is generated from.

The suggestion from the Board is for her to resubmit an application for the uses that she is doing now or for a second dwelling when she has the plans for it. If she was to reapply for the use of easement B for residential purposes, it would be about three months before it came back to the Board or six to eight months if she was to reapply for her current use.

Board member Edlao suggested that perhaps the Land Division would consider a recommendation such as allowing Lani Stark access to maintain (fertilizing, light work, etc.) her gardens; no commercial activity allowed. In conjunction with this, she would need to apply for the use of the easement for her gardens. If there is any evidence or sightings that she is doing anything other than caring for the plants there will be a cease and desist of the easement.

The Board:

Approved Staff's Recommendation, but added the following new conditions:

"3. Provided however, the effective date of the rescission of the prior Board action that will effectively terminate any interest in and rights to Easement B shall be deferred for six (6) months on the following conditions: (a) Lani Stark may only use Easement B for access to her private property solely for taking care of and maintaining her garden and plants, provided however, only Lani Stark and her four (4) employees may use Easement B for the aforesaid limited purpose of taking care of and maintaining the garden and plants; (b) Lani Stark must immediately cease and desist using Easement B for commercial, agricultural tourism or any other purpose except as stated in the aforesaid condition (a); (c) Easement B shall not be used for any purpose other than as stated in the aforesaid condition (a); (d) Lani Stark must execute the department's standard right-of-entry that contains, among other provisions, indemnity and insurance provisions, and the purpose of the right-of-entry shall be limited to the aforesaid condition (a); (e) Lani Stark shall remove all of the unauthorized encroachments described in Staffs' Submittal, and remedy or remove the other violations (including but not limited to the unauthorized and unpermitted grading outside of Easement B area, the unauthorized and unpermitted placing of electrical lines outside of Easement B area as described in Staffs' Submittal and the unauthorized and unpermitted stream diversion crossing over State lands); (f) Lani Stark may install a gate at the entrance of Easement where a fence currently exists, with the understanding that the gate will allow Lani Stark to access, and provided further, no other removal of fencing placed on the State lands by Permittee Lafayette Young shall be removed; (g) Lani Stark shall immediately complete and submit an application for Easement B and describe the true and intended purpose and use of Easement B; and (h) such other terms and conditions as may be prescribed by the department with the approval of the Chairperson.

Unanimously Approved As Amended (Edlao, Johns).

Member Schuman recused herself

Member Gon recused himself

Item: D-3: Mutual Cancellation of General Lease No. S-4411 and Issuance of a 30-year Direct Lease to the Diamond Head Theatre, Inc. for Production of Live Theater and Allied Purposes, including Education in the Theatre Arts Purposes, Honolulu, Oahu, TMK: (1) 3-2-30:01. (ODLO/Robert)

Member Tim recused himself

Chairman Young had some questions in regards to the recommendation on the rent. He would rather just have a fixed rent at \$480 per year. Mr. Tsuji said that it would be difficult because the applicant does short term rentals out to both non-profit and for-profit entities and the for-profit entities is up to \$1,200 a day. Current rent is about approximated \$4,600 a year and this lease was issued directly without an auction.

Because they are canceling the old lease and creating a new one, they have the right for direct negotiation with out being subjected to an auction. Chairman Young's suggestion is to have the rent fixed at a nominal (\$480) and in the event that there is any subletting, a formula can be figured out on the subletting. Mr. Tsuji is saying then to take 50% of what the applicant makes off of subletting minus allowable deductions. The applicant uses the rent from the subleases to pay for the building maintenance and would charge their subleases less than \$480. Right now the State gets 10% of fair market value or 10% of net receipts. The agreement reached becomes \$480 plus 10% of what they are charging the subleases.

In reference to the term of the lease, Deena Dray, applicant, brought up the fact that the building is old and in need of some renovations. Staff recommendation is for a term of 30 years with the option to extend up to 65 years. However, Ms. Dray is under the impression that the longer the time period, perhaps more people will be willing to invest. Therefore she would rather have a 40 year term with the option to extend for an additional 25 years.

The Board:

Amendment to recommendation 3.B:

~~["The rent under the new lease shall be determined by an independent appraisal using the formula of 10% of the fair market rental value, or 10% of the net receipts, whichever is greater; rental reopening to occur every ten (10) years."]~~

"The rent under the new Lease shall be set at \$480.00 per annum and 10% of the gross rental receipts received by DHT when it rents out the Diamond Head Theatre facilities to third parties."



Exhibit LS-2



EASEMENT A UNAUTHORIZED PARKING AREA



EASEMENT A UNAUTHORIZED PARKING GRADING



FENCE HOLE AFTER UNAUTHORIZED REMOVAL BY STARK



GARDEN PATHS ON STARK PROPERTY



**GRAVEL GARDEN PATH WITH
OVERGROWN PLANT MATERIAL**



INTERSECTION OF EASEMENT B WITH EASEMENT A